

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

KIRK R. MOLDER,

Petitioner,

vs.

LEROY KIRKEGARD; ATTORNEY
GENERAL OF THE STATE OF
MONTANA,

Respondents.

Cause No. CV 13-59-GF-DWM-JTJ

FINDINGS AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE

On July 19, 2013, Petitioner Kirk Molder filed a petition seeking a writ of habeas corpus under 28 U.S.C. § 2254. (Doc. 1.) At the time of filing, Mr. Molder was proceeding pro se. On February 12, 2014, the Court granted Mr. Molder's motion for the appointment of counsel. (Doc. 6.) Assistant Federal Defender David Ness appeared on behalf of Mr. Molder on the same day. On December 8, 2014, Mr. Molder filed an Amended Petition. (Doc. 17.)

On March 6, 2015, the State filed an Answer to the Amended Petition and also moved for summary judgment, asserting a statute of limitations defense. *See* (Docs. 27-29). The State relied primarily on this Court's order in *Rogers v. Ferriter*, CV 12-13-BU-DLC-JCL (D. Mont. Aug. 2, 2013), to support its motion for summary judgment. On August 5, 2015, the Ninth Circuit Court of Appeals

reversed this Court's decision. *Rogers v. Ferriter*, Cause No. 13-35790 (9th Cir. 2015). The Court ordered both parties to provide supplemental briefing on the statute of limitations issue in light of the Ninth Circuit's ruling. (Doc. 39.)

On August 28, 2015, the State filed its supplemental brief and conceded that, in light of the Ninth Circuit's ruling, the motion for summary judgment should be denied. (Doc. 40.)

Based on the foregoing, the Court enters the following:

ORDER

Based upon the Ninth Circuit's recent decision in *Rogers v. Ferriter*, Cause No. 13-35790 (9th Cir. 2015), and the State's concession, the State's motion for summary judgment on the statute of limitations defense should be **DENIED**.

DATED this 14th day of September, 2015.

/s/ John Johnston
John Johnston
United States Magistrate Judge